

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**918 SECOND APPEAL NO.548 OF 2013
WITH
CIVIL APPLICATION NO.9974 OF 2013**

**RANGNATH RAMBHAU KALE, DECEASED, THROUGH LRS AND OTHERS
VERSUS
RAGHUNATH RAMBHAU KALE, DECEASED, THROUGH LRS AND ANOTHER**

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**Mr. N.B. Narwade, Advocate for appellants
Mr. L.B. Palod, Advocate for respondent Nos.1B and 1D**

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 28th SEPTEMBER, 2021.**

ORDER :

1 Present appeal has been filed by original defendants challenging the Judgment and Decree passed in Regular Civil Appeal No.76/2011 by the present respondents-original plaintiffs, by learned District Judge-5, Ahmednagar on 28.08.2012, thereby the said appeal came to be allowed, reversing the Judgment and Decree passed by the learned Trial Judge. The present respondents-original plaintiffs had filed Regular Civil Suit No.83/2006 before learned Joint Civil Judge Junior Division, Shevgaon, Dist.

Ahmednagar for perpetual injunction. The said suit was dismissed on 24.01.2011 and as aforesaid, the appeal filed by the original plaintiffs stood allowed. The Judgment and Decree passed by the learned Trial Judge was set aside. The suit was decreed. The original defendants were perpetually restrained from obstructing the possession of the plaintiffs over the suit property from digging pits for cow dung and making heap of fodders in the suit land.

2 Heard learned Advocate Mr. N.B. Narwade for appellants and learned Advocate Mr. L.B. Palod for respondent Nos.1B and 1D

3 It has been vehemently submitted on behalf of the appellants-original defendants that the learned First Appellate Court erred in re-appreciating the evidence, which was, in fact, properly appreciated by the learned Trial Judge. The learned First Appellate Court has not properly appreciated the agreement executed on 03.03.1982 on a stamp paper of Rs.5/-, which clearly showed that there was partition in the year 1982 and the Southern side East-West portion was given to original defendant No.1 Rangnath and his brother Savaleram. That document was executed by Raghunath. Further, the First Appellate Court failed to appreciate the agreements Exhs.87 and 88, on the ground that those documents are not registered documents and the document Exh.87 does not bear the signatures

of Savaleram and Rangnath. On the basis of denial of the thumb impression of deceased Raghunath it has been held that the said agreements Exhs.87 and 88 are not duly proved documents. Wrong interpretation of Section 17 of the Indian Registration Act has been made and in fact, the documents could have been considered for collateral purpose under Section 49 of the Registration Act. It was wrongly held by the First Appellate Court that partition had taken place in respect of suit property, in between three brothers, in the year 1971. It was not at all necessary that the partition should be registered one, as it was in respect of pre-existing rights. Substantial questions of law are arising in this case.

4 Per contra, the learned Advocate for the respondent Nos.1B and 1D supported the reasons given by learned First Appellate Court.

5 It is to be noted that the original plaintiffs had come with a case that the suit property is the ancestral property of the plaintiffs, which they have received in the partition of the year 1971. The defendants, who are the relatives of plaintiffs have no concerned with the suit property. There is an open space on the South-West corner of the suit property. Defendants tried to dig a pit and store fodder on it. They objected for the same and they filed the suit. Defendants filed written statement and denied that there was any kind of partition in the year 1971. Plaintiff No.1, defendant No.1 and father of

defendant Nos.2 to 4 were the real brothers. Plaintiff Raghunath got his share separated in the year 1982. At the time of said partition, he gave 10 R area towards the South from East-West side to defendant No.1 Rangnath and another 10 R land towards that land's East to Savaleram for their use. Document to that effect was executed on a stamp paper of Rs.5/-. They were using the said space since 1982. It was then stated that, that land has been given to defendant No.1 and Savaleram permanently.

6 On the basis of evidence, the learned Trial Judge held that plaintiffs have failed to prove possession over the suit property. Plaintiffs have not proved that the defendants are obstructing their possession over the suit property. Additional issue was framed and it is said that defendants have proved that 10 R land each was given by plaintiffs father late Raghunath to brother Rangnath and Savaleram.

7 At the outset, it is to be noted that perusal of those documents at Exhs.87 and 88 (photo copy of the same has been made available) would show that it is styled as "sale deed". But it is on stamp paper of Rs.5/-. However, it does not bear the thumb mark. It is to be noted that the said thumb mark on those documents has not been identified. These two documents are not registered. Definitely, when 10 R land each is the subject-matter of these two documents, then it is definitely more than value of

Rs.100/-. Therefore, the learned First Appellate Court has correctly held that it cannot be even looked for collateral purpose under Section 49 of the Registration Act, as it would have not transferred title to the person named therein. Those documents are on insufficiently stamp paper also. One more fact, that is, required to be noted is that the documents on record definitely, indicated that partition had taken place in respect of suit property in the year 1971. Even if we consider the case of the defendants as it is, then as per the alleged partition of 1982 Raghunath would become owner of the suit property. If he wants to transfer any portion of his land to another person after the partition, then that will have to be from a legally permissible mode of transfer e.g. gift, sale or will. Since defendants are not coming with a case of gift or will, only the sale would remain. Exhs.87 and 88 do not show that any consideration was paid by those defendants to Raghunath. The documents has been styled as "Kararnama". When it was specifically asked to the learned Advocate appearing for the appellants to confirm what is the nature of the documents, he was unable to say that it is sale deed, but then he told that nomenclature given is, "Kararnama". If we consider the contents, it can be said that words used therein would show that it was permanently given. An agreement cannot create ownership rights or any other kind of rights equivalent to ownership or possessory in favour of the person named in the document. Intention of the party at the time of

executing the documents is then required to be seen and it appears that oral evidence as well as written statement that the defendants intent to claim permanent rights, may be equivalent to ownership rights and, therefore, in view of the fact that both the documents were not duly stamped and not registered; benefit of any kind could not have been given to the defendants.

8 The facts can be viewed from another angle also. As per the contention of the defendants, only Raghunath got his share separated. The details of the share that went to defendant No.1 and Savaleram have not been given. If at all Raghunath had intention to give 10 R of open land to both the brothers, then he could have definitely negotiated with them at the time of partition itself and could not have got less land than to his entitlement. Therefore, from any angle, the defence that has been taken by the defendants is absolutely not convincing, not conclusively proved and legally valid.

9 The evidence of the plaintiffs appears to be probable on the preponderance of probabilities and, therefore, the possession of the plaintiffs needs to be protected. Accordingly, it is protected by the First Appellate Court. The decision taken by the First Appellate Court is absolutely not perverse, taking into consideration the facts and evidence that has been led. It is not given the rise to any substantial questions of law, as contemplated

under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal deserves to be dismissed at the threshold. Accordingly, it is dismissed. Pending Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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